

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 95-97

December 13, 1995

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: B. Allan Benson, Acting Associate General Counsel

SUBJECT: Unfair Labor Practice Hearings Scheduled for Mid-December

As you are aware, the continuing resolution under which we are operating expires at midnight December 15, 1995. If there is neither an additional continuing resolution nor an appropriations bill funding our Agency for Fiscal Year 1996 in effect by midnight of December 15, a shutdown of Agency operations would have to begin on Monday, December 18. At this time, it appears that we may not know until December 18 whether this will occur. Accordingly, in cooperation with the Division of Judges, we have formulated contingency plans for unfair labor practice hearings scheduled to be litigated the week of December 18. In doing so, as in the past, we have attempted to balance the need for administrative simplicity, the fairness to all parties to have adequate notice and preparation time, and the desire to limit the number of postponements as much as possible.

In the event of a lack of funding as of December 16, employees would report to work on December 18 to begin the orderly shutdown of Agency operations. As part of these efforts, trials scheduled for hearing on December 18 within the metropolitan areas of Atlanta, New York, Philadelphia and San Francisco - Oakland¹ will open as scheduled and recess at the end of the day if not completed and no spending authorization has been enacted. Conducting these trials is consistent with the orderly shutdown of Agency operations since it would be very difficult, if not impossible, to timely notify all parties and witnesses of a postponement and there would be minimal travel costs to the Agency in proceeding to hearing on December 18.

As to trials scheduled to commence or resume on December 18 in other cities handled by the Atlanta, New York and San Francisco offices of the Division of Judges, if there is no funding for FY 1996 on or before Thursday, December 14, the parties should be immediately advised that the trials will begin on

¹ There are no trials scheduled in either Baltimore or Washington, DC on December 18.

Tuesday, December 19, assuming that there is funding by December 18.² Thereafter, if there is no funding on or before December 18, an order will issue by the Division of Judges postponing these trials indefinitely.

However, with respect to trials conducted by the Washington office of the Division of Judges which are scheduled to commence or resume on December 18 outside the aforementioned metropolitan areas, a decision will be made the week of December 11 as to the manner in which to proceed. We are hopeful that these trials can also be postponed for one day and can proceed on December 19 if there is funding legislation enacted on December 18. The parties should be notified of this possibility in order to secure their availability. You will be notified as to the manner in which these cases should be handled as soon as the decision is made.

If there is no funding by December 18, all trials scheduled to commence or resume on December 19 through 22 will be postponed by order issued by the Division of Judges.

There are no hearings scheduled the week of December 26. With the exception of the resumption of one trial scheduled in New York, there are no hearings scheduled the week of January 2, 1996. If there is still no funding shortly before January 3, the Division of Judges will postpone that hearing. Thus, we have not set forth contingency plans for trials scheduled subsequent to the week of December 18.

If you have any questions, please contact Deputy Assistant General Counsel Nelson Levin or your Assistant General Counsel.

B. A. B.

cc: NLRBU

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In order to secure the availability of the parties, Regions should notify them at this time that there is a possibility that these December 18 trials will be moved to December 19.